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8   UNITED STATES DISTRICT COURT
                          WESTERN DISTRICT OF WASHINGTON
9   AT TACOMA

10   ALBERT CHICANO, on behalf of himself and
     all others similarly situated,
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12   Plaintiff,   Case No. C06-5028FDB

13   v.   ORDER DENYING
                                                     RECONSIDERATION OF
14   MONIER, INC., a California corporation,   DISCOVERY ORDER

15   Defendant.

16   Plaintiff moves for reconsideration of the Court's order granting Defendant leave to conduct

17   discovery of eleven potential class members, asserting that under Washington's Consumer Protection

18   Act proof of individual reliance is not required.   Defendant responded at the Court's request, objects

19   to reconsideration, and argues that reliance upon the alleged misrepresentation must be shown in this

20   case involving alleged misrepresentations.

21   Plaintiff is not entitled to reconsideration. The *Pierce* case cited by Plaintiff did not deal with

22   misrepresentations, rather, it concerned the omission of a written report required by statute.

23   *Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784-85 (1986) held:

24   "Hereafter, five elements all statutorily based, must be established by a plaintiff in order that he or

25   she prevail under a private CPA action." The five elements are as follows: (1) the existence of an

26   ORDER - 1

1 unfair or deceptive act (defined as an act that has the capacity to deceive a substantial number of

2 members of the public), (2) in the course of trade or commerce, (3) which affects the public interest,

3 (4) injury to business or property, and (5) causation between the unfair or deceptive act and the

4 injury. 105 Wn.2d at 783-85. Thus, in order to prove proximate causation in a case of misleading

5 representations, each class member must show that he/she would not have purchased the good or

6 service "but for" the alleged misrepresentation(s), which necessarily requires reliance.

7   ACCORDINGLY, IT IS ORDERED: Plaintiff's Motion to Reconsider Discovery Order

8 [Dkt. # 36] is DENIED.

9   DATED this 2nd day of February, 2007.

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12 FRANKLIN D. BURGESS
    UNITED STATES DISTRICT JUDGE

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